Freedom of Information Act 2000

Decision notice

Date: **11 June 2013**

Public Authority: **London Borough of Bexley**
Address: **Civic Offices**
Broadway
Bexleyheath
Kent
DA6 7LB

Decision (including any steps ordered)

1. The complainant requested a copy of the London Borough of Bexley's Chief Executive's business diary for the month of May 2012. The London Borough of Bexley disclosed most of the information but redacted some of the personal data contained in the diary as it was considered exempt under section 40(2) of the Freedom of Information Act (the Act). The Commissioner's decision is that the information originally disclosed to the complainant was not an accurate reflection of the information held in the London Borough of Bexley's records. However, the Commissioner considers that an accurate copy has now been provided and that the London Borough of Bexley has correctly applied the exemption to the remaining withheld information.

2. The London Borough of Bexley breached section 10 of the Act by not providing its initial response – and also the accurate disclosable information - within 20 working days. It also breached section 11 of the Act by not complying with the applicant's reasonable request for the information to be provided in permanent form as it provided the information via email. Due to the Commissioner's investigation, the complainant has now received a copy of the information in paper form. No remedial steps are required of the London Borough of Bexley.

Request and response

3. On 31 May 2012, the complainant wrote to the London Borough of Bexley and requested information in the following terms:

"Please supply a copy of the Business Dairy of Mr Will Tuckley, Chief Executive, for the month of May, 2012, in paper format."

4. The London Borough of Bexley responded on 28 September 2012, 83 working days after the request was made.

5. In its response, the London Borough of Bexley provided information via email relevant to the complainant's request but refused to disclose the information held in its entirety. It considered the withheld information to be exempt under section 40(2) of the Act.

6. The disclosed information was provided as a list of appointments and was not a photocopy or exact replication of the original form in which the information was held. The Act provides an individual the right to ask for recorded "information", not documents. Whilst it is often easiest for a request to be satisfied by providing a copy of the documents there is no obligation on behalf of a public authority to do so. If a public authority can ensure that it provides all the relevant information to the requester then it will have met its obligations.

7. The complainant requested an internal review on 30 September 2012 as he had concerns whether the information he was provided with was accurate. He also drew attention to the fact his request was for a "copy" and not the information to be provided in a list. The London Borough of Bexley conducted its internal review on 11 October 2012. It stated that the original decision was being upheld. With regards to the complainant's concerns over not receiving an exact copy, the member of staff conducting the internal review stated that they had inspected the original and was satisfied that the list provided was an accurate reflection of the original.

Scope of the case

8. The complainant originally contacted the Commissioner on 6 August 2012 to complain about the London Borough of Bexley's lack of response to his request. After this response and subsequent internal review was received, the complainant contacted the Commissioner to complain about the way in which his request had been handled.

9. The Commissioner considers the scope of the case to be whether the information provided to the complainant was accurate, whether the complainant was entitled to receive the information in the form he requested, and whether the section 40(2) exemption was correctly applied.

Reasons for decision

Section 11 – means by which communication be made

10. Section 11 of the Act states that:

> *"(1) Where, on making his request for information, the applicant expresses a preference for communication by any one or more of the following means, namely –*
>
> *(a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant*
>
> *the public authority shall so far as reasonably practicable give effect to that preference."*

11. In the complainant's request he stipulates that he would like a "copy" provided "in paper format". As previously stated, the Act does not afford an individual a guarantee to receive a copy of a document, but rather the information it contains. However, the Act does allow an individual to state whether they would like the information in permanent or electronic form.

12. There has been some confusion in this case as the complainant appears to have been under the impression that the London Borough of Bexley holds a permanent form of the Chief Executive's diary in its records. The London Borough of Bexley holds the requested information in an electronic form, which makes it problematic to provide a photocopy of the diary.

13. However, the Commissioner considers that it is reasonable and well within the London Borough of Bexley's means to take screenshots of the requested information which when printed off becomes a permanent form of the requested information. As a result of the Commissioner's investigation this has been done and the Commissioner's decision is that this provides a "copy" of the information in the form requested.

14. The Commissioner notes that in its initial response the London Borough of Bexley provided the complainant with the information via email and not in permanent form as requested. As it was well within the London Borough of London Borough of Bexley's means to accord with the complainant's request, it has breached section 11 of the Act.

Information held

15. The Commissioner also notes that the complainant had concerns over the accuracy of the information provided to him. Having seen the screenshots, which are an accurate copy, it is clear that his concerns

were justified as there were a number of discrepancies between the information he was initially provided and the information in the screenshots.

16. However, now that screenshots of diary have been disclosed the Commissioner considers that there are no more concerns about whether the information provided is an accurate copy of the information held by the London Borough of Bexley.

Section 40(2) – third party personal data

17. Section 40(2) of the Act states that a public authority should not disclose information if it constitutes third party personal data and that disclosure would breach one of the data protection principles outlined in the Data Protection Act 1998 (DPA).

18. For the purposes of this decision, the Commissioner has only considered the information that has been withheld by the London Borough of Bexley.

Is the requested information personal data?

19. Under the terms of the DPA personal data means data which relates to a living individual who can be identified either by the data alone or when combined with other information that is likely to be known.

20. The request is for a copy of the business diary for the London Borough of Bexley's Chief Executive. Given that the London Borough of Bexley only has one Chief Executive and he was named in the request the information is easily identifiable, and it relates to a living individual. Therefore the Commissioner is satisfied that the information is personal data.

21. The Commissioner has reviewed the withheld information and notes that the appointments are infrequent and isolated events that occur outside of Mr Tuckley's working day and do not relate to the business of the London Borough of Bexley. Therefore the Commissioner is satisfied that the information relates to Mr Tuckley's private life and not his public-facing role as the Chief Executive of the London Borough of Bexley.

Would disclosing the requested information breach a data protection principle?

22. To answer this question the Commissioner considers the first data protection principle; this states that the processing of personal data must be fair and lawful, and shall not be processed unless one of the conditions in schedule 2 is met. The Commissioner will firstly consider whether it is fair to disclose the requested information, and – if so – whether condition 6 in schedule 2 has been met.

Fairness

23. In order to determine the fairness of disclosure the Commissioner will consider the following factors:

    - The data subject's reasonable expectations of what would happen to their personal data.
    - Consequences of disclosure.
    - The balance between the rights and freedoms of a data subject with the public's legitimate interest in disclosure.

The data subject's reasonable expectations of what would happen to their personal data

24. The seniority of the data subject can influence whether or not there is a greater demand for transparency, as the role and activities of senior members of staff are likely to have a greater impact on the public. The data subject in this instance is the Chief Executive of the London Borough of Bexley, which is its most senior position. Therefore there is a greater expectation that certain personal information about him would be disclosed compared to more junior members of staff.

25. However, the Commissioner has reviewed the withheld information and is satisfied that it relates to Mr Tuckley's private life rather than his public one. The Commissioner considers that Mr Tuckley has a right to privacy as per Article 8 of the European Human Rights Act and it is important that this is protected. He also considers that Mr Tuckley would have a reasonable expectation that such information would not be disclosed.

Consequences of disclosure

26. The Commissioner considers it important that Mr Tuckley has a right to privacy and that this right would be impeded through personal data relating to his private life being disclosed.

The balance between the rights and freedoms of a data subject with the public's legitimate interest in disclosure

27. In reaching his decision, the Commissioner has considered all of the factors that have been mentioned. He notes that the seniority of Mr Tuckley does increase the legitimate public interest in the information being disclosed.

28. However, the Commissioner considers that the overriding factor is that this information relates to Mr Tuckley's private life and not his public role as Chief Executive of the London Borough of Bexley. All individuals are entitled to a private life regardless of their position. The Commissioner's view is that there is a reasonable expectation that the information withheld in this case should not be disclosed, particularly in the absence of a strong legitimate interest in its disclosure. Consequently, this outweighs the legitimate public interest in transparency that is largely afforded due to Mr Tuckley's seniority.

29. Therefore the Commissioner's decision is that the disclosure would not be fair and would breach the first data protection principle.

Other matters

Inconsistencies in the London Borough of Bexley's responses

30. There are a significant number of differences between the information that was originally disclosed and the screenshots that were later disclosed. The Commissioner would ask the London Borough of Bexley to be more careful in future if it needs to extract information from a document or other source in order to provide a response to a request. It is important that a complainant can trust the information that they are given, and instances such as this can cause doubts over the accuracy of what is disclosed.

Concerns over the London Borough of Bexley's internal review

31. The Commissioner also wishes to draw attention to the fact that the London Borough of Bexley's internal review stated:

    "I have reviewed the list of meetings provided against the diary and I am fully satisfied that the list of meetings provided is an appropriate and complete response to your request. I do not consider that there is any requirement to provide a copy of the business diary since your request for information has been met."

    It is apparent from an inspection of both the information provided and the original that there are a number of differences, and the Commissioner considers that this should have been apparent to the individual conducting the internal review.

32. The purpose of an internal review is to allow a public authority a chance to reconsider its response, and in this instance to determine whether it correctly provided an accurate copy of the requested information. This has not been achieved on this occasion, and the Commissioner would ask that the London Borough of Bexley ensure that such mistakes are avoided in the future.

Right of appeal

33. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

    First-tier Tribunal (Information Rights)
    GRC & GRP Tribunals,
    PO Box 9300,
    LEICESTER,
    LE1 8DJ

    Tel: 0300 1234504
    Fax: 0116 249 4253
    Email: informationtribunal@hmcts.gsi.gov.uk
    Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

34. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

35. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed .....

Alexander Ganotis
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